Before the

Federal Communications Commission

Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996;	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	
	)	
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF SPRINT NEXTEL CORPORATION ON PETITIONS FOR RECONSIDERATION

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SUMMARY

Sprint Nextel supports the Commission's decision in the CPNI *Report and Order* to strengthen the safeguards for customers' CPNI. As a national carrier with approximately 54 million customers, Sprint Nextel has a long history of protecting the privacy of its customers, and has taken a leadership role in combating pretexters and protecting customers' CPNI. Consistent with this role, Sprint Nextel agrees with the Commission that carriers should take "reasonable measures" to protect CPNI. Enhanced password protections, notification to law enforcement authorities and customers of any CPNI breaches, and notification to customers of account changes, are all reasonable steps to respond to fraudulent access to customers' CPNI. Nevertheless, there are certain aspects of the CPNI *Report and Order* that require reconsideration due to legal and practical defects. Accordingly, Sprint Nextel supports the Petitions for Reconsideration.

The Petitions raise three issues that require reversal and/or modification. First, the Commission should reverse its "presumption of liability" enforcement standard. The Commission established a presumption of liability, or an inference that a carrier has not taken "reasonable measures," whenever a pretexter, through whatever means, gains unauthorized access to CPNI. The Commission reached this enforcement standard without meeting Administrative Procedure Act ("APA") standards for notice and opportunity for comment. In fact, the Commission had no delegated authority from Congress to even adopt such an enforcement standard pursuant to Section 222 of the Communications Act. Furthermore, the shifting of the burden of proof or burden of persuasion to carriers in the event of an enforcement proceeding is inconsistent with the APA, Sections 208 and 503 of the Communications Act, and Commission precedent.

Finally, the presumptive liability standard creates potential inequities for carriers given the requirement that carriers take all "reasonable measures" to "discover and protect against" an evolving pretexter threat. Many explanations may exist for security breaches that carriers cannot readily foresee or prevent (*e.g.* compromised passwords due to password sharing among family members, business partners, or significant others).

Second, the Commission should modify its definition of "address of record" to allow carriers to provide essential customer service within the first 30 days after initial account activation. Carriers must be able to interact with new customers -- and meet high customer expectations -- as needed, via the address on file at the time of service initiation.

Finally, the Commission should modify slightly ambiguous language in its rule for telephone access to call detail to clarify that the rule will only apply to customer-initiated telephone contact, and thereby not infringe upon carrier-initiated customer calls that are not implicated by pretexter activities.

TABLE OF CONTENTS

Before the

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In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996;	)	CC Docket No. 96-115
	)	
	)	
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	
	)	
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COMMENTS OF SPRINT NEXTEL CORPORATION ON PETITIONS FOR RECONSIDERATION

Sprint Nextel Corporation ("Sprint Nextel"), through its undersigned counsel, respectfully submits its comments in response to the Commission's Public Notice[1] of the Petitions for Reconsideration of the Commission's *Report and Order* released on April 2, 2007, in the above-captioned proceedings.[2] Sprint Nextel has been active in these

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[1] Public Notice, Petition for Reconsideration of Action in Rulemaking Proceeding, Subject: *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115 and WC Docket No. 04-36, Report No. 2821 (July 20, 2007). Although the Commission specifically refers only to Oppositions and Replies to be filed to the Petitions for Reconsideration, Sprint is seeking leave to file comments in support of the Petitions for Reconsideration filed by CTIA- The Wireless Association and the United States Telecom Association.

[2] *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115 and WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking (rel. April 2, 2007) ("*Report and Order*").

proceedings since the Commission's Notice of Proposed Rulemaking ("*NPRM*") was released on February 14, 2006.[3] As one of the largest telecommunications carriers in the United States, serving approximately 54 million customers, Sprint Nextel has a significant interest in the issues raised by the Petitions for Reconsideration.

Sprint Nextel supports the Petitions for Reconsideration of CTIA-The Wireless Association[4] and the United States Telecom Association,[5] which seek reconsideration of the following three aspects of the *Report and Order*:

(1) The Commission's enforcement mechanism adopting a presumption that carriers have not taken "reasonable measures" to protect CPNI in all instances where a pretexter obtains unauthorized access to CPNI. This

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[3] Sprint Nextel filed initial comments and reply comments in response to the original *NPRM* (on April 28, 2006 and on June 2, 2006 respectively), and initial comments and reply comments (filed on July 9, 2007 and August 7, 2007 respectively) in the *Further NPRM* (released on April 2, 2006). Moreover, Sprint Nextel has held approximately one dozen *ex parte* meetings with Legal Advisors to the Commissioners and with Commission Staff between October, 2006 and January, 2007 on the entire scope of this rulemaking. *See, e.g.* Sprint Nextel Comments filed July 9, 2007 in *Further NPRM* at 4-7 & nn. 7, 8, 9 &12 (discussing *ex parte* filings on November 1, 2006, December 11, 2006, January 26, 2007, and February 12, 2007).

[4] *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115 and WC Docket No. 04-36, Petition for Reconsideration of CTIA - The Wireless Association® (filed July 9, 2007) ("CTIA Petition").

[5] *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115 and WC Docket No. 04-36, Petition for Clarification or Reconsideration of the United State Telecom Association (filed July 9, 2007) ("USTA Petition"). The USTA Petition seeks reconsideration of only the Commission's enforcement mechanism, while the CTIA Petition seeks reconsideration of the enforcement mechanism and other aspects of the *Report and Order*.

enforcement mechanism violates legal standards of the Administrative Procedure Act and the Commission's enforcement regime.

(2) The Commission's definition of "address of record," which fails to facilitate immediate notification of, and full customer service for, new customers who may not have an address on record for "at least 30 days."

(3) The Commission's rule governing telephone access to CPNI, which should not preclude carriers from contacting their customers at a customer-provided telephone number other than the defined "telephone number of record."

While Sprint Nextel strongly supports many of the Commission's efforts to protect CPNI, it believes that the Commission must correct or modify these important aspects of the *Report and Order* to comply with well-established legal standards, to allow customer service for new customers in accordance with the intent of the new Rules and to avoid unintended interference with the customer-carrier relationship.

I. A PRESUMPTION OF CARRIER LIABILITY FOR UNAUTHORIZED ACCESS TO CPNI IS CONTRARY TO LAW AND THE COMMISSION'S ENFORCEMENT STANDARDS.

In paragraph 63 of the *Report and Order*, the Commission adopts the following enforcement standard for any circumstances in which a pretexter has unlawfully obtained unauthorized access to a customer's CPNI:

> Specifically, we hereby put carriers on notice that the Commission henceforth will infer from evidence that a pretexter has obtained unauthorized access to a customer's CPNI that the carrier did not sufficiently protect that customer's CPNI. A carrier then must demonstrate that the steps it has taken to protect CPNI from unauthorized disclosure, including the carrier's policies and procedures, are reasonable in light of the threat posed by pretexting and the sensitivity of the customer information at issue. If the Commission finds at the conclusion of the investigation that the carrier indeed has not taken sufficient steps

> adequately to protect the privacy of CPNI, the Commission may sanction it for this oversight, including through forfeiture.[6]

This enforcement standard amounts to a "presumption of liability" in that a carrier will be deemed to violate the law unless the carrier can successfully rebut the presumption.

In its February 10, 2006 Notice of Proposed Rulemaking ("*NPRM*"),[7] the Commission did not put Sprint Nextel and other interested parties on any actual notice of its consideration of such a presumptive liability standard. The *NPRM* instead sought comment on the adoption of a safe harbor to protect those carriers from liability who comply with Commission CPNI requirements:

> *Enforcement.* Are there any steps the Commission should take to enhance its ability to enforce the requirements of section 222 and the Commission's regulations relating to CPNI? Is there a set of security requirements that the Commission should adopt that would exempt a carrier from liability or establish a safe harbor if the carrier implemented those requirements? *Likewise, should failure to comply with some minimum set of requirements form the basis of a violation? What other measures might enhance the Commission's ability to enforce its CPNI regulations?*[8]

The Commission did not even hint at a presumptive liability standard that would place the onus of liability and the burden of persuasion on the carrier. Rather, it sought

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[6] *Report and Order*, ¶ 63.

[7] *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Notice of Proposed Rulemaking, FCC 06-10, CC Docket 96-115 (rel. February 14, 2006) ("*NPRM*").

[8] *NPRM*, ¶26 (emphasis supplied) (footnotes omitted).

comment on something entirely different: whether the Commission should "establish a safe harbor" and "exempt a carrier from liability." Similarly, the Commission invited comment on whether failure to comply with "some minimum set of requirements" should "form the basis of a violation...." The Commission gave no notice at all that it was considering a standard diametrically opposed to a safe harbor: a presumptive liability standard with the burden of proof shifted onto the carrier.

In response to the *NPRM*, Sprint Nextel filed comments embracing the Commission's proposed adoption of a "safe harbor" to "enhance" the Commission's "ability to enforce the requirements of section 222 and the Commission's regulations relating to CPNI...."[9] Many other carriers did so as well.[10] Sprint Nextel representatives also made several *ex parte* presentations to the Commission in October and November, 2006, specifically proposing a safe harbor standard modeled after the Gramm Leach Bliley Act governing the protection of personal financial information.[11] Had the

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[9] Sprint Nextel Reply Comments at 16-18 (filed June 2, 2006)("Sprint Nextel Supports The Implementation of a "Safe Harbor"). *See also*, *NPRM*, ¶ 26.

[10] *Report and Order*, ¶66 & nn. 199 & 200 (referencing comments filed in support of a safe harbor by Cingular Wireless, Qwest, AT&T, and CTIA).

[11] *See* October 17, 2006 Sprint Nextel *ex parte* presentations to Ms. Michelle Carey, Senior Legal Advisor to Chairman Kevin Martin, and Messrs. William Dever, Timothy Stelzig, Jonathan Reel, and Ms. Cindy Spiers of the Wireline Competition Bureau ("Sprint Nextel endorses a Safe-Harbor standard modeled after the...Gramm-Leach-Bliley Act"); October 31, 2006 *ex parte* presentation in separate meetings with John Hunter, Chief of Staff & Senior Legal Advisor to Commissioner Robert McDowell; Bruce Gottlieb, Legal Advisor to Commissioner Michael Copps; and Ian Dillner, Legal Advisor to Commissioner Deborah Tate (same); November 20, 2006 Sprint Nextel *ex parte* presentation to Messrs. William Dever, Timothy Stelzig, Jonathan Reel, and Ms.

Commission given notice to Sprint Nextel in its *NPRM,* or in a subsequent NPRM, of its intention to consider adoption of a presumptive carrier liability standard for any unauthorized access to CPNI, Sprint Nextel would certainly have expressed concerns over its legality through written comments and *ex parte* presentations.

A. The Presumptive Liability Standard Fails to Comply with the Notice and Comment Procedures of the Administrative Procedure Act ("APA").

CTIA points out in its Petition that [t]he inference of carrier culpability drawn merely from pretexter unauthorized access to a customer's CPNI "*was neither proposed by the Commission nor supported by any of the commenters. . . .* [Compounding the matter,] the *CPNI Order* has flipped the burden of persuasion and placed it on the carrier -- *without raising the issue in the NPRM or providing an opportunity for commenters to respond.*"[12]

For a new "legislative" rule to be lawfully promulgated under the APA, the Commission must provide proper notice of its proposal to interested parties. "New rules *that work substantive changes*" or "*major substantive legal addition(s)* to prior

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Cindy Spiers of the Wireline Competition Bureau, Competition Policy Division (same); *see* 15 U.S.C. §6801(b) and the FTC Safeguards Rule, 16 CFR Part 314, required under the Gramm-Leach-Bliley Act, requiring financial institutions to implement an information security program no later than May 23, 2003 to "identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of customer information...." *See*, 16 CFR § 314.4(b).

[12] CTIA Petition at 5 and 11 (emphasis added).

regulations are subject to the APA's procedures."[13] Section 553(b) of the APA provides that a "[g]eneral notice of proposed rulemaking shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law."[14] Furthermore, the APA requires that (1) reference be made to the "legal authority under which the rule is proposed;" and (2) that administrative notice include "either the terms or substance of the proposed rule or a description of the subjects and issues involved."[15] The D.C. Circuit has concluded that this APA notice requirement "improves the quality of agency rulemaking," exposes regulations to varied public comment, guarantees "fairness to affected parties," "and provides a well-developed record that 'enhances the quality of judicial review.'"[16]

In *Sprint v. FCC,* the U.S. Court of Appeals for the D.C. Circuit addressed a similar situation where a rule was adopted by the Commission without a new NPRM or other legally sufficient notice and an opportunity for interested parties to comment. The

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[13] *US Telecom Ass'n. v. FCC,* 400 F.3d 29, 34-35 (2005) (internal citations omitted).

[14] 5 U.S.C. § 553(b)(2) & (3).

[15] 5 U.S.C. § 553(b); *see also, Public Service Comm'n. of the District of Columbia v. FCC,* 906 F.2d 713, 717 (D.C. Cir. 1990).

[16] *Sprint Corp. v. Federal Communications Comm'n,* 315 F.3d 369, 373 (D.C. Cir. 2003) (quoting *Small Refiner Lead Phase-Down Task Force v. United States EPA,* 705 F.2d 506, 547 (D.C. Cir. 1983).

D.C. Circuit vacated the rule and remanded to the Commission.[17] Here, just as in *Sprint*, the Commission "did not publish a NPRM" in the Federal Register or provide in an "actual notice" to Sprint Nextel or any other interested parties the possible adoption of a presumptive liability standard.[18]

This lack of notice also means that the Commission's presumptive liability standard and shifted burden of proof cannot be considered a "logical outgrowth" of the *NPRM*. For a final rule to be a "logical outgrowth" of a proposed rule, "the agency first must have provided proper notice of the proposal. 'The necessary predicate...is that the agency has alerted interested parties to the possibility of the agency's adopting a rule different than the one proposed.'"[19] As the record demonstrates, Sprint Nextel and the commenting carriers were only on notice that the Commission was considering a safe harbor standard, and certainly not an antithetical presumptive liability standard.[20] The comments submitted in response to the *NPRM* and *ex parte* filings confirm that interested parties were not aware — in fact they had no reason to be aware — that the Commission

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[17] *Id.* at 373, 377 (Commission "jettisoned" its existing payphone service provider ("PSP") compensation rules in order to adopt new PSP compensation rules; after the Commission denied petitions for reconsideration, the D.C. Circuit vacated the Commission's new PSP compensation rule for failure to give adequate notice and opportunity to comment to interested parties).

[18] *Compare* CTIA Petition at 5 & 11 with *Sprint v. FCC*, 315 F.3d at 374.

[19] 315 F.3d at 376 (quoting *Kooritzky v. Reich*, 17 F.3d 1509, 1513 (D.C. Cir. 1994)).

[20] *Id.* ("there can be no 'logical outgrowth" of a proposal that the agency has not properly noticed.").

was considering imposing on carriers a presumptive liability standard and a shifted burden of persuasion.

No notice of any kind on this subject appears anywhere in this proceeding. No comments discuss it either. Accordingly, the Commission's adopted enforcement standard must fail for lack of notice.[21]

B. The Commission's Adoption of a Presumptive Liability Standard and Shifted Burden of Persuasion Exceeds Its Congressionally-Delegated Authority Under Section 222(a) and the APA.

In addition to a failure to comply with the notice and comment requirement of the APA, the new enforcement standard exceeds any arguable authority the Commission may have to regulate CPNI pursuant to 47 U.S.C § 222. Section 222(a) imposes a general duty on carriers to "protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers."[22] Accordingly, this statute may arguably authorize the Commission to require carriers to "take reasonable measures to discover and protect against attempts to gain unauthorized

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[21] *See, id.* ("Bureau's Notice did not provide 'actual notice' sufficient to remedy the Commission's procedural shortcomings."); *Compare, United States Telecom Ass'n v. FCC*, 400 F.3d 29, 41 (D.C. Cir. 2005)("unlike the situation in *Sprint Corp.*, the FCC did not proceed without notice. To the contrary, the proposal published in the Federal Register [to require number portability without regard to physical location of the subscriber] made the issue under consideration *crystal clear.* And as we have said, the *proposal was virtually identical to the order ultimately adopted by the Commission.*") (emphasis added).

[22] 47 U.S.C. §222(a); *NPRM* at ¶2 & n.4.

access to CPNI,"[23] as the Commission requires in one of its new CPNI rules. Nevertheless, nowhere in the CPNI statute does Congress create an affirmative duty for carriers to prevent every conceivable fraudulent or criminal act that might arise vis-a-vis unauthorized access to CPNI, nor does this provision give the FCC authority to place such an onerous obligation on carriers.

There are limits to the Commission's delegated authority under the Communications Act of 1934, and subsequent amendments. "The FCC's power to promulgate legislative regulations is limited to the scope of the authority Congress has delegated to it."[24] Therefore, "an agency's interpretation of a statute is not entitled to deference absent a delegation of authority from Congress to regulate in the areas at issue."[25] The Commission does not attempt in the *Report and Order* to ground its new presumptive liability standard on Section 222 or any other statutory authority. The Commission's announced "resolute enforcement action"[26] of its presumptive liability standard and shifting of burden of proof to carriers far exceeds any authority delegated to

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[23] 47 C.F.R. 64.2010(a) ("*Safeguarding CPNI*").

[24] *American Library Ass'n et al. v. FCC*, 406 F.3d 689, 698-99 (D.C. Cir. 2005) (citations omitted) (reversing and vacating Commission's broadcast flag regulations as the result of an "*ultra vires* action by the FCC."); *see also, Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 374 (1986).

[25] *Id.* (quoting *Motion Picture Ass'n. of America, Inc. v. FCC*, 309 F.3d 796, 801 (D.C. Cir. 2002).

[26] *Report and Order*, ¶65.

the Commission by Congress under Section 222. A requirement to prevent all third-party fraudulent or criminal behavior is an impossible standard. In any event, it must first be authorized by statute. Here, however, no such strict liability standard exists within the applicable statute, Section 222.

C. The Presumptive Liability Standard Contravenes the Burden of Proof Set Forth in the APA and Commission Enforcement Precedent.

As argued by CTIA and the U.S. Telecom Association in their respective petitions for reconsideration, the enforcement standard distorts reality. Under the APA and Commission precedent, it is the Commission (or a complainant) — and not the respondent — who has the burden of proof in enforcement proceedings.[27] Section 556(d) of the APA requires that "[e]xcept as provided by statute, the proponent of a rule or order [i.e. the Commission] has the burden of proof." This means Section 222 imposes no burden of proof on anyone other than the Commission.[28]

It is also well settled that the burden of proof under Section 556(d) of the APA refers to the "burden of persuasion."[29] As CTIA argues in its Petition, in the event of an alleged violation of Section 222, the Act places the burden of persuasion (to persuade the

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[27] CTIA Petition at 11; USTA Petition at 2.

[28] *See,* 47 U.S.C. § 222(a); *Report and Order* n.6.

[29] *Department of Labor v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). Subsequent court decisions have confirmed that Section 556(d) places the burden of persuasion on agencies that are the proponents of orders they seek to enforce. *United States v. Menendez*, 48 F.3d 1408, 1413-14 (5th Cir. 1995); *Pel-Star Energy Inc. v. United States Dep't. of Energy,* 890 F. Supp. 532, 545-46 (W.D. La. 1995). *See,* USTA Petition at 3-4.

decision maker that a violation occurred) on the "charging party."[30] Whether a Section 208 complaint or a forfeiture proceeding brought under Section 503, the burden of proof or persuasion lies with the Section 208 Complainant or the Commission, respectively.[31] Combined with a comprehensive new CPNI authentication regime that governs customer authentication, information security, security breach notification, breach reporting, and protocols for specific customer transactions, all of which necessitates the development and deployment of new information security technologies, the presumptive liability enforcement mechanism piles a draconian enforcement regime on carriers. Under the *Report and Order*, it is the carrier that must "now demonstrate that...[its] policies and procedures are reasonable" to avoid liability.[32] This is wholly at odds with established law: as CTIA discusses in detail in its Petition, an enforcement case requires the Commission to prove under Sections 222 and 503 that a carrier consciously and deliberately omitted to take "reasonable measures" to protect CPNI.[33]

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[30] CTIA Petition at 11.

[31] *See, Hi-Tech Furnace Systems, Inc. v. FCC*, 224 F.3d 781, 787 (D.C. Cir. 2000) (affirming that the complainant in a Section 208 proceeding brought against a carrier has the burden of proof); *see also,* CTIA Petition at 11.

[32] *Report and Order*, ¶63.

[33] CTIA Petition at 12-13 (comparing 47 U.S.C. § 503(b)(1)(B) with 47 U.S.C. § 312(f); *see also,* Sprint Nextel Comments (April 28, 2006) at 7 & n.15 (discussing forfeiture authority of the Commission under 47 U.S.C. §503(b)).

Additionally, a presumptive liability standard predicated on ongoing "reasonable measures" to discover and prevent unauthorized attempts to access CPNI is an extremely amorphous and unfair liability standard given the ingenuity of thieves, the evolving tactics of thieves, and the simple fact that a lot of mischief is simply beyond the carriers' control. For instance, as Sprint Nextel and other commenters mentioned in their comments to the *NPRM*, inevitably some customers freely share their passwords with significant others, business partners and family members, thereby diminishing the security of their own accounts through no fault of the carrier.[34]

II. THE COMMISSION SHOULD MODIFY ITS DEFINITION OF "ADDRESS OF RECORD" TO GIVE CARRIERS THE FLEXIBILITY AND OPTIONS TO PROVIDE SERVICE FOR, AND IMMEDIATE NOTIFICATION TO, NEW CUSTOMERS.

The Commission's *Report and Order* requires carriers to immediately notify customers of account changes, including notification by "mail to the address of record." Sprint Nextel supports CTIA's request to modify the definition of "address of record" to avoid a complete communication breakdown with new customers. Sprint Nextel supports CTIA's proposed addition, that "for the first 30 days following account establishment, [the address of record] is an address that the carrier has associated with the customer's account upon activation of service." Sprint Nextel often helps its customers via the postal or electronic "address of record" for a variety of reasons, whether to send requested CPNI, customer notifications, and authenticating information. Yet sending this

[34] Sprint Nextel Comments (April 28, 2006) at 10; see CTIA Petition at 9 & n.21.

information could violate the rule if the address on file at the time of new customer service initiation is not also considered the "address of record." Thus the current rule could prevent carriers such as Sprint Nextel from providing assistance to a customer during the critical first month of service.

Sprint Nextel's experience is precisely that described by CTIA: new customers demand an even higher level of service at the outset of the carrier-customer relationship as they become acquainted with the carrier and its services and features. Therefore, having the ability to notify the new customer immediately in a way that makes sense for the new customer while avoiding any benefit to pretexters can be easily accomplished by a slight modification to the definition of "address of record," as proposed by CTIA – namely, to permit notification within the first 30 days of account establishment to an address associated with the customer's account upon activation of service.

This slight modification would in no way undermine the rule's intent: pretexters do not establish new accounts to exploit; rather they try to exploit established accounts. Thus, addresses that customers provide at service initiation have every indication of authenticity. In fact, the slight rule modification would promote the intent of the rule by ensuring that new customers also receive notice within the first 30 days of service when their account information is changed or an online account is established for them. Additionally, it would enable customers to get the help and service they need during their first 30 days of service.

III. THE COMMISSION SHOULD CLARIFY THAT ITS RULE FOR TELEPHONE ACCESS TO CPNI IS RESTRICTED TO CUSTOMER INITIATED CONTACT.

The Commission's rule addressing telephone access to CPNI is appropriately directed to the release of call detail record information resulting from "customer-initiated telephone contact."[35] However, there are occasional circumstances -- as discussed in CTIA's Petition[36] -- in which a carrier must contact a customer on a carrier-initiated call at a telephone number other than the primary "telephone number of record" and then share CPNI to provide customer-service. For example, a wireless customer might provide the carrier with a home landline telephone number or office number as an alternative telephone number. Disclosure of CPNI to a customer using an alternate telephone number could be necessary if there are technical issues limiting the carrier's ability to contact the customer at the telephone number of record (*e.g.* in the case of a lost or stolen handset), or when contacting the customer about a final bill once the customer has left the carrier or terminated an account.[37]

This change can be accomplished by clarifying that the limitation on providing call detail information in Section 64.2010(b) to a telephone number of record applies only in response to a "customer-initiated call." This change conforms to the remainder of the

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[35] 47 C.F.R. § 64.2010(b)

[36] CTIA Petition at 22.

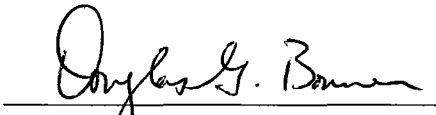
[37] *See,* 47 U.S.C. § 222(d)(1).

new rule and the CPNI statute's provisions and reflects the *Report and Order*'s intent to avoid the unauthorized disclosure of call detail record information based on customer-initiated telephone contact, while protecting consumers from pretexters.

IV. CONCLUSION

The protection of CPNI is a serious issue, and is one which telecommunications carriers and the Commission have aggressively addressed to combat the practices of pretexters. For the foregoing reasons, Sprint Nextel supports the CTIA Petition for Reconsideration and the United States Telecom Association Petition for Reconsideration, and respectfully requests that the Commission reconsider its *Report and Order* by undertaking the following steps: (1) declare that there is no presumption that an unauthorized disclosure of CPNI means that the carrier failed to take "reasonable measures" to prevent pretexting; (2) declare that carriers do not have the burden of persuading the Commission that their policies and procedures are reasonable to address pretexting; (3) modify the "address of record" definition to allow carriers to assist and notify new customers within the first 30 days after initiation of service; and (4) clarify that the rule governing telephone access to call detail information only applies to customer-initiated telephone contact.

Respectfully submitted,



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